

kind in §410.414(c), that a miner has a pulmonary or respiratory impairment, a board certified or board eligible radiologist's interpretation of a chest X-ray taken by a radiologist or qualified technician will be accepted if: (1) It is of a quality sufficient to demonstrate the presence of pneumoconiosis and; (2) it was submitted in support of a claim, unless it is established that the claim has been fraudulently represented.

(j) *Acceptance of autopsy reports.* Unless there is reason to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of the disease will be accepted if it is already on file.

(k) *Acceptance of affidavits-miner deceased.* Where there is no medical evidence or other relevant evidence (see §410.414(c)) to establish total disability or death due to pneumoconiosis of a deceased miner, affidavits from the spouse and other individuals having knowledge of the deceased miner's physical condition will be sufficient to establish total disability or death due to pneumoconiosis if they are already on file.

[43 FR 34781, Aug. 7, 1978, as amended at 44 FR 10058, Feb. 16, 1979]

§410.703 **Adjudicatory rules for determining entitlement to benefits.**

(a) *General.* Section 402(f)(2) of the Act provides that the criteria and standards to be applied to a claim reviewed under section 435 of the Act, for determining whether a miner is or was totally disabled due to pneumoconiosis or died due to pneumoconiosis, shall be no more restrictive than the criteria applicable to a claim filed with the Social Security Administration on or before June 30, 1973, under part B of title IV of the Act. In keeping with this provision, the interim evidentiary rules and disability criteria contained in §410.490 will be applicable for this review.

(b) *Payment provisions.* The DOL has sole responsibility for assigning liability for payment purposes. The DOL regulations relating to the amount of benefits payable, the manner of payment and all other provisions published

at 20 CFR part 725 shall be applicable to a claim approved under this subpart.

(c) *Date from which benefits are payable.* Benefits for claims reviewed under this subpart G for which entitlement to benefits is established under the BLBRA of 1977 are payable on a retroactive basis for a period which begins no earlier than January 1, 1974.

§410.704 **Review procedures.**

(a) *Notification.* Each claimant who has filed a claim for benefits under part B of title IV of the Act, and whose claim is either pending before the Social Security Administration or the courts or has been denied on or before March 1, 1978, will be mailed a notice advising that, upon the request of the claimant, the claim shall be:

(1) Reviewed by the Social Security Administration or DOL, Office of Workers' Compensation Programs to see whether entitlement to benefits may be established under the BLBRA of 1977; and

(2) If review by the Social Security Administration is requested, the review will be made on the basis of the evidence on file as of March 1, 1978; and

(3) If review by the Office of Workers' Compensation Programs is requested, the Office of Workers' Compensation Programs will provide an opportunity for additional evidence to be submitted for consideration prior to a determination.

(b) Where the claimant is mentally incompetent or physically incapable, or is a minor, review of the claim may be elected by those people described in §410.222. Where the original claimant is deceased, any person who may be entitled to benefits as a survivor of the claimant, including those described in §410.570(c), may elect review of the claim.

(c) *Effect of review of a pending part B claim under the BLBRA of 1977 on the pending claim.* Part B claims pending before the Social Security Administration or the courts will continue to be processed under the old law at the same time that these claims are being reviewed by the Social Security Administration, at the claimant's request, under the BLBRA of 1977. Claimants would then have two separate and

independent claims for benefits pending. Where claims for benefits are reviewed, upon request, under this subpart G and it is determined that entitlement to benefits is established under the BLBRA of 1977, part C benefits may be paid back to January 1, 1974. Where pending part B claims continue to be processed under the old law and it is determined that the claimant is entitled to benefits under the old law, then the benefits may include payment for periods prior to January 1, 1974. Part C benefits payable to an individual for periods beginning with January 1, 1974, are offset by part B benefits payable for the same periods to the individual. Election by claimants to have their pending claims reviewed under the BLBRA of 1977 for payment of benefits back to January 1, 1974, will not affect the processing of their pending part B claims under the old law for payment of benefits prior to January 1, 1974.

(d) *Response to notification.* A request for review by the Social Security Administration or the Office of Workers' Compensation Programs, must be received by the Social Security Administration within 6 months from the date on which the notice is mailed. Upon receipt, the request will be dated and made a part of the claims file. If a request for review by the Social Security Administration or the Office of Workers' Compensation Program is not received by the Social Security Administration within 6 months from the date the notice is mailed, the claimant shall be considered to have waived the right of review afforded by this subpart G unless *good cause* can be established for not responding within this time period. *Good cause* may be established in the following situations:

(1) Circumstances beyond the individual's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Social Security Administration; or

(3) Unusual or unavoidable circumstances, the nature of which demonstrate that the individual could not reasonably be expected to have been aware of the need to respond within this time period.

Good cause for failure to respond timely does not exist when there is evidence of record that the individual was informed that he or she should respond timely and the individual failed to do so because of negligence or intent not to respond.

(e) *Changing election.* After a claimant has elected review by the Social Security Administration, he or she may change the election any time prior to the date an initial determination is made. If a claimant has elected review by the Office of Workers' Compensation Programs. The claimant may change the election if the Social Security Administration has not yet forwarded the file to the Office of Workers' Compensation Programs. Once the file is forwarded to the Office of Workers' Compensation Programs, a claimant's right to change the election from the Office of Workers' Compensation Programs to the Social Security Administration is governed by the regulations of DOL.

(f) *Social Security Administration review elected.* (1) If review by the Social Security Administration is requested, a complete review of the evidence on file will be made to see if the file establishes entitlement to benefits under the BLBRA of 1977. Evidence on file is information in the black lung claims file, in the social security title II and title XVI disability claims files, or in a person's earnings record, as of March 1, 1978. In the case of a pending claim which is being appealed, this review will not be delayed because of the pending claim. If it is determined that eligibility to benefits can be established, the claims file, including all evidence and other pertinent material in the claims file, will be transferred to the Office of Worker's Compensation Programs for processing and assignment of liability in accordance with regulations published by DOL at 20 CFR part 727. The decision of the Social Security Administration approving the claim will be binding upon the Office of Worker's Compensation Programs as an initial determination of the claim. The Social Security Administration will notify the claimant of its approval. If the claimant disagrees with any part of the Social Security Administration's determination of approval,

the claimant may request review of this determination by the Office of Worker's Compensation Programs. The Social Security Administration has no authority under the BLBRA of 1977 to process an appeal of any determination made by it in reviewing these denied and pending part B claims.

(2) If it is determined that the evidence on file is insufficient to support an award of benefits, the claims file, including all evidence and other pertinent material in the claims file, will be transferred to the Office of Worker's Compensation Programs for further review in accordance with regulations published at 20 CFR part 727. The Social Security Administration will notify the claimant of this action.

(g) *DOL, Office of Workers' Compensation Programs review elected.* If review by the Office of Workers' Compensation Programs is requested, the claims file and all pertinent material will be forwarded to the Office of Workers' Compensation Programs, without review by the Social Security Administration, for processing by the Office of Workers' Compensation Programs in accordance with regulations published at 20 CFR part 727.

[43 FR 34781, Aug. 7, 1978, as amended at 44 FR 10058, Feb. 16, 1979; 44 FR 12164, Mar. 6, 1979; 62 FR 38454, July 18, 1997]

§410.705 Duplicate claims.

(a) *Approved by the Social Security Administration—denied or pending with the Office of Workers' Compensation Programs.* A person whose part B claim for benefits was approved by the Social Security Administration and who also filed a part C claim with the Office of Workers' Compensation Programs which is pending or has been denied shall be entitled to a review of the part C claim by the Office of Workers' Compensation Programs under the BLBRA of 1977.

(b) *Denied or pending with the Social Security Administration—approved by the Office of Workers' Compensation Programs.* A person who has filed a part B claim with the Social Security Administration which is pending or has been denied and who has also filed a part C claim with the Office of Workers' Compensation Programs, which has been approved, shall be entitled, upon re-

quest, to a review of the pending or denied part B claim in light of the BLBRA of 1977 by either the Social Security Administration or the Office of Workers' Compensation Programs, in accordance with this subpart.

(c) *Pending or denied by the Social Security Administration and the Office of Workers' Compensation Programs.* A person who has filed a claim both with the Social Security Administration and the Office of Workers' Compensation Programs and whose claims are either pending with or have been denied by both agencies shall have the claim reviewed under the BLBRA of 1977 by the Social Security Administration if such review is requested by the claimant. If the claim is not approved by the Social Security Administration it shall be forwarded to the Office of Workers' Compensation Programs for further review as provided in §410.704(e)(2). During the pendency of review proceedings by the Social Security Administration, if any, no action shall be taken by the Secretary of Labor with respect to the part C claim which is pending or has been denied by DOL. If the claimant does not respond to notification of his or her right to review by the Social Security Administration within 6 months of the notice (see §410.704(c)) unless the period is enlarged for good cause shown, the Office of Workers' Compensation Programs shall proceed under DOL's regulations at 20 CFR part 727 to review the claim originally filed with the Secretary of Labor. If the claimant, upon notification by the Social Security Administration of his or her right to review (see §410.704(a)) requests that the claim originally filed with the Social Security Administration be forwarded to the Office of Workers' Compensation Programs for review, or if more than one claim has been filed with the Secretary of Labor by the same claimant, such claims shall be merged and processed with the first claim filed with the Office of Workers' Compensation Programs.

§410.706 Effect of the Social Security Administration determination of entitlement.

Under section 435 of the BLBRA of 1977 a determination of entitlement